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May 16, 2005

To: The Board of Governors of Exhibition Place

From: Dianne Young  
General Manager & CEO

Subject: **Aerophile Lease - Request for Amendment**

**Purpose:**

This report recommends amendments to the lease agreement between Aerophile S.A. (Aerophile) and the Board respecting the balloon ride at Exhibition Place.

**Financial Implications & Impact Statement:**

The recommendations in this report will result in a decrease in revenue of \$60,000 which was included within the 2005 Operating Budget for Exhibition Place Program.

**Recommendation(s):**

**This report recommends that the Board amend the lease with Aerophile S.A. for the operation of the helium-filled attraction at Exhibition Place on the terms and conditions as contained in this report, and any other terms as may be required by the General Manager and the City Solicitor.**

**Background:**

At its meeting of November 2002, the Board approved entering into a Licence with Aerophile S.A. ("Aerophile") for a three-years for the operation of a helium-filled balloon attraction at Exhibition Place at a base rent of \$50,000. City Council at its meeting of November 2002 approved a minor variance to the City sign by-law thereby allowing a helium balloon attraction (with advertising) to operate at Exhibition Place during the period 2004-06. At its meeting of May 2003, the Board extended the due diligence period from December 31, 2003.

In January 2004, the Board approved amendments to the Licence to waive Percentage Rent in Year 1 and during the period of the annual CNE for as long as Aerophile is remitting a commission from their operation directly to the CNE; and, to adjust the amount of gross sales upon which Percentage rent would be calculated in Years 2 and 3 of the Term.

In September 2004, the Board approved further amendments to the Licence to waive the Base Rent which would be payable in July and August given the great difficulty in entry to the Exhibition Place site in June/July because of the concentrated set up for the Molson Indy, and given the commission paid by Aerophile to the CNE.

Comments:

Aerophile is a registered aircraft manufacturer located in Chantilly, France that has been in operation since 1993, and is the world's leading operator of tethered balloons used for entertainment and amusement purposes. Regarded as a major tourist attraction, the "Aero 30" helium balloon attraction has been operating since 1994 in many countries including Japan, Switzerland, China, Australia, France, Germany, Austria, Italy and the United States.

The "Aero 30" looks very much like a typical hot air balloon, with one important distinction – it is controlled by a sophisticated hydroelectric winch and cable system that ensures greater stability, safety and control of the helium balloon and attached gondola. Unlike typical hot balloons with a basket or gondola that accommodate the pilot and 4-6 passengers, the "Aero 30" features a polyester and aluminum gondola designed to comfortably accommodate 30 passengers at a time.

In 2004, Aero 30 operated as a tourist attraction at Exhibition Place and provided the public with a unique opportunity to view the City of Toronto and Lake Ontario from the comfort and safety of the balloon's gondola. At an altitude of some 300 feet, it was a visible and attractive landmark for Exhibition Place.

Aerophile constructed the Aero 30 site in 2004 at a cost of approximately \$250,000 and operated this attraction throughout the summer/fall 2004. However, as noted above in the "Background" section, there have been several setbacks since Aerophile first approached the Board in 2002. Such problems were never encountered by Aerophile in other locations/countries and thus, required the parties to seek amendments to the original agreement in order to make this attraction work for both parties. These setbacks included the following:

- it took significantly longer than expected to receive full approvals and clearances from Transport Canada and NavCan as this is literally the first helium-filled and tethered balloon attraction to operate in Canada;
- there were delays in converting the European specifications to meet Canadian Building and Standards codes;
- an affiliation with a Canadian partner did not happen until mid-2003 causing a delay in finalizing business agreements, financing, etc.
- it took much longer than expected to secure a title sponsor, Computerland;
- the value of the title sponsorship was less than they had originally forecasted in the proformas;
- there were construction delays
- in 2004 there were difficulties with operating during the Molson Indy and Aerophile had to pay an additional commission to Molson Indy; and,
- the weather conditions in 2004 caused a large number of "no-fly" days.

As a result of all these issues, Aerophile in their first year of operations recorded a loss of \$60,000 on the Toronto operation.

Despite these set-backs, Aerophile had communicated its intention to proceed to re-inflate the balloon and start operating the attraction again in May 2005. However, in early 2005, Aerophile unexpectedly received notice of the unilateral cancellation of the Computerland sponsorship which sponsorship provided substantial financing to cover the operating costs. Following this cancellation, Aerophile proceeded to undertake a campaign to find a replacement sponsor but has been unable to do so and it is now beyond the timeframe to be able to secure a sponsor and launch the balloon for the 2005 season. Accordingly, Aerophile has requested that the Board not terminate the lease but that Aerophile be relieved of its obligation to launch the balloon ride in 2005 and that all rent and percentage rent be waived for the period from April 2005 to February 29, 2006, to allow Aerophile to find a new sponsor and launch the balloon attraction in 2006.

Aerophile has made investment in the balloon site at Exhibition Place both in capital dollars and operating costs and are requesting the indulgence of the Board to allow it to re-launch this attraction in 2006. While it did not in its first year of operations attract significant visitors/patrons, it is a very novel tourist attraction for both the City and Exhibition Place.

Exhibition Place staff are recommending the following amendments to the Aerophile agreement:

- (a) **Outstanding Accounts:** The agreement be amended as set out in paragraphs (b) and (c) below on the condition that Aerophile immediately pays all accounts receivable owed to the Board (\$20,872.49) and all accounts receivables owed to the CNE respecting the 2004 CNE commissions.
- (b) **General Obligation:** Aerophile be relieved of the requirement to operate the Balloon as an attraction for the period from April to November 2005 provided that Aerophile, at its sole cost and expense, shall remove or secure any or all above-ground operating apparatus associated with the Balloon as required by the General Manager.
- (c) **Annual Base Fee and Annual Percentage Fee:** Both Fees will be waived by the Board for the period from May 1, 2005 to February 29, 2006.
- (d) **No Future Waiver by the Board:** Aerophile shall acknowledge and agree that the Board's agreement to these terms shall not in any way constitute the waiver by the Board of any other rights it may have under the Agreement as amended, including the right to terminate and exercise its remedies for breach of the Agreement or, at its sole option, to refuse to extend the Agreement upon the expiry of the initial Term on June 14, 2007.

Conclusion:

This report recommends that the Board amend the agreement with Aerophile for the operation of the helium-filled attraction at Exhibition Place on the terms and conditions set out in this report and any other terms as may be required by the General Manager & CEO and the City Solicitor.

Contact:

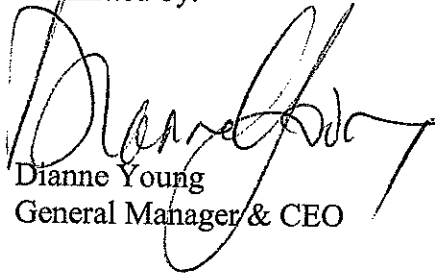
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Submitted by:

A handwritten signature in black ink, appearing to read "Dianne Young". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Dianne Young

General Manager & CEO